IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting.

(Chapter VIII Rule 32 (2) (b)

Description of the case.

W.P. No. 1240(S/S) of 2006

Date of decision: 13-09-2006

~~A.F.R. (Approved for reporting)~~

Not approved for reporting

Initial of Judge

Date: - 13-09-2006

Note: - Bench Reader will attach this at the top of the first page of the judgment when it is put up before Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No.1240 (S/S) of 2006

Kurban Ali S/o Ibne Hasan
R/o village Mohammadpur Kunheri
P.O. Sultanpur, District Haridwar ……Petitioner

Versus

1. State of Uttaranchal through
   Director General of Police, Dehradun
2. Senior Superintendent of Police, Dehradun
   District Dehradun
3. Deputy, Superintendent of Police (M)
   Karmik, Dehradun, Uttaranchal……..Respondents

Dated:-13th September, 2006

Mr. Lok Navneet Kaushik learned counsel for the petitioner.
Mr. Parvesh Tripathi learned Standing Counsel.

Hon'ble J. C. S. Rawat, J.

1. By means of this writ petition under section 226 of the Constitution of India, the petitioner has sought the following prayers:-

(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 24.08.2006 passed by respondent No.3 (Annexure –1).

(ii) Issue a writ, order or direction in the nature of mandamus directing the respondents not to give effect the impugned order dated 24.08.2006 and not to disturb the petitioner from his present place of posting i.e. Dehradun till the pendency of present writ petition.

(iii) Pass any other order or direction which this Hon'ble Court may deem fit and

proper under the circumstances of the case.

(iv) Award the costs of the petition in favour of the petitioner.

2. The petitioner's case is that he was apponted on the post of Urdu Translator (Assistant Lower Divisional Clerk) by the then Superintendent of Police, Tehri Garhwal on 06.05.1995. When he was appointed on the said post he was allotted police department from the ends of District Magistrate, Tehri Garhwal. Other Urdu Translators appointed on district basis in various departments were absorbed in the said department expect the police department in which the petitioner was working. In the year 2005, he came to Dehradun from Tehri Garhwal on his own request and the petitioner has been working in the District Dehradun. It has been alleged in the petition that the guidelines regarding transfer framed by the erstwhile State of U.P. in the year 2000 says that the Urdu Translator would be given posting at the district level itself as far as possible. It has been further pleaded in the petition that the impugned order dated 24.08.2006 passed by the respondent no.3 is liable to be set aside on the ground that the petitioner cannot be transferred outside the District of Dehradun. It has been further pleaded that the post of the petitioner is beyond the purview of the police rank and the transfer has been made by the Superintendent of Police, who was not competent to pass the transfer order. Feeling aggrieved by the transfer order, the present petition has been filed before this Court.

3. I have heard the learned counsel for the petitioner and learned Standing Counsel.

4. It was contended on behalf of the petitioner that the respondents have violated the transfer policy framed by the erstwhile State of U.P. in the year 1998 and 2006. It was further contended that the Allahabad High Court in W.P. No. 12412/2000 on 19.04.2000 had directed that Urdu Translator would not be transferred outside the district. Therefore the transfer order is liable to be quashed. Learned Standing Counsel refuted the contention. It is pertinent to mention here that the aforesaid order dated 19.04.2000 had been passed as an interim relief and it had not been passed as a final judgment. It is well settled position of law that the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. While exercising the power of judicial review of administrate action, the court is not the appellate authority and the Constitution of India does not permit the court to direct or advice the executive in the matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the executive provided those authorities do not transgress their constitutional limits or statutory power. The scope of judicial review is confined to the question whether the order passed by the authority is

against the statutory provisions or violative of the fundamental rights of the petitioner or against the provisions of the Constitution. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly is a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines with regard to the transfer of the employees does not confer upon the government employees a legally enforceable right.

5. In the case of **Shilpi Bose Vs. State of Bihar AIR 1991 SC 532**, the lady teachers of primary schools were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the teachers, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. The Hon'ble Supreme Court has allowed the appeal and set aside the judgment of the High Court by observing as follows:-

> *"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from*

one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

6. There is no malafide or violation of statutory rules, in the case in hand. In the case **Union of India Vs. S.L. Abbas (1993) 4 SCC 357**, the respondent-Abbas was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3.4.1986. The Tribunal allowed the petition and quashed the transfer order. When the matter came before the Hon'ble Supreme Court, the Hon'ble Supreme Court set aside the order of the Tribunal and observed as under:

7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right."

7. In the case in hand, the guidelines laid down by the erstwhile State of U.P. are not binding for the State of Uttaranchal. The guidelines laid down by the State Government are not legally enforceable by the court. It is also pertinent to mention here that no guidelines have been laid down by the State of Uttaranchal. The guidelines laid down by the State of U.P. are not binding upon the officers of the State of Uttaranchal. It was pointed out that the Deputy S.P. was not competent to pass the transfer order. Perusal of the appointment order of the petitioner transpires that it has been passed under the directions of the superior officer. As such, it will be presumed that the Dy. S.P. has passed the transfer order under the directions of the competent authority unless it is shown otherwise. The learned counsel could not demonstrate me that the competent authority had not directed the Dy. S.P. to pass such order. It is also pertinent to mention here that the appointment of the petitioner was made as Urdu Translator (Assistant Lower Divisional Clerk) by the Superintendent of Police. It clearly reveals that the petitioner was appointed by the police department and as such the police department is competent to transfer him.

8). In view of the foregoing discussion, I am of the view that the petition is devoid of merit and is liable to be dismissed.

9). The petition is dismissed accordingly. No order as to costs.

(J.C.S.Rawat, J.)

Dated 13.09.2006
LSR